

DEPARTMENT OF DEFENSE  
DIRECTIVES SYSTEM TRANSMITTAL

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| DoD 1401 .1-M, Change 7 | September 30, 1996 | Special      |

| ATTACHMENTS |
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| 19 pages    |

INSTRUCTIONS FOR RECIPIENTS

The following page changes to DoD 1401. 1-M, "Personnel Policy Manual For Nonappropriated Fund Instrumentalities: December 1988, are authorized:


PAGE CHANGES

Remove: Pages vi through xiii, V-3 through V-9

Insert: Attached replacement pages and new pages VIII-1 through VIII-4

EFFECTIVE DATE

The above changes are effective immediately.

  
Larry E. Curry, Director  
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

|  |          |
|--|----------|
| 5. Reemployment Priority Lists   | v-5      |
| 6. Employee Grievances   | V-6      |
| 7. Disciplinary Actions  | v-7      |
| 8. Performance Management Program  | v-7      |
| 9. Incentive Awards and Recognition programs   | V-8      |
| 10. Occupational <b>Safety</b> and Health  | V-8      |
| 11. Drug and Alcohol Abuse   | V-8      |
| <br>B. LABOR- MANAGEMENT RELATIONS POLICY  | <br>V-8  |
| C. ENTITLEMENT TO PERSONAL SERVICES AND<br>GOVERNMENT QUARTERS                                     | <br>V-8  |
| D. " <b>WHISTLEBLOWER</b> " PROTECTION FOR NAFI EMPLOYEES AND<br>APPLICANTS DISCLOSING INFORMATION | <br>v-9  |
| <br>CHAPTER VI - RETIREMENT AND INS WCE  | <br>VI-1 |
| <br>A. GENERAL POLICY  | <br>VI-1 |
| B. APPLICATION   | VI-1     |
| c. SPECIFIC POLICIES   | VI-1     |
| <br>1. Funding Principles and Fund Reviews   | <br>VI-1 |
| a. Funding   | VI-1     |
| b. Fund Reviews  | VI-2     |
| c. Investment of <b>NAF</b> Retirement Program Funds<br>and Trust Requirement                      | VI-2     |
| d. Investment Rate of Return Calculation Requirement   | VI-3     |
| <br>2. Social Security   | <br>VI-4 |
| 3. Retirement  | VI-4     |
| a. Retirement Coverage   | VI-4     |
| b. Credited Service  | VI-4     |
| c. Retirement Eligibility  | VI-4     |
| d. Contributions   | VI-5     |
| e. Retention of Accrued Credited Service for<br>Retirement Annuity Purposes                        | VI-5     |
| <br>4. Worker's Compensation Benefits  | <br>VI-5 |
| a. Longshoremen's and Harbor Workers' Compensation Act   | VI-5     |
| b. Coordination With Other Benefits  | VI-5     |
| <br>5. Unemployment Benefits   | <br>VI-5 |

|   |        |
|---|--------|
| a. Basis for Payment  | VI-5   |
| b. Charge to Employment NAFI  | VI-5   |
| 6. Group Insurance  | VI-6   |
| a. Coverage   | VI-6   |
| b. Voluntary Participation  | VI-6   |
| c. Group Insurance Benefits   | VI-6   |
| d. Retention of Group Insurance Rights  | VI-6   |
| e. Funding  | VI-7   |
| 7. Health Maintenance Organizations   | VI-7   |
| 8. Coordination   | W-7    |
| CHAPTER VII - EMPLOYMENT OF NAFI PERSONNEL IN FOREIGN AREAS   | VII-1  |
| A. GENERAL POLICY AND PURPOSE   | WI-1   |
| B. SPECIFIC POLICIES  | v-II-1 |
| 1. U.S. Citizens or U.S. Nationals Recruited Locally  | VII-1  |
| 2. U.S. Citizens Recruited in the United States   | VII-2  |
| 3. Employment of Non-U. S. Citizens   | VII-2  |
| 4. Allowances and Differentials   | VII-2  |
| 5. Travel and Transportation  | WI-3   |
| 6. Return Rights  | VII-4  |
| 7. Entitlement to Government Quarters and Facilities  | VII-4  |
| 8. Medical and Health Services  | VII-4  |
| 9. Privileges   | VII-4  |
| 10. Home Leave  | VII-4  |
| 11. Renewal Agreement Travel  | VII-5  |
| 12. Emergency Leave and Travel  | VII-5  |
| 13. Local Holidays in Foreign Countries   | VII-5  |
| 14. Employee Benefits   | VII-5  |
| 15. Care and Disposition of Remains of Deceased Employees   | VII-5  |
| 16. Evacuation of NAF Employees and Family Members  | VII-6  |
| CHAPTER VIII - CIVILIAN ASSISTANCE AND RE-EMPLOYMENT (CARE)<br>FOR NAF EMPLOYEES AFFECTED BY WORKFORCE REDUCTIONS | VIII-1 |
| A. FUNDING OF NAFI BASE REALIGNMENT AND<br>CLOSURE (BRAC) COSTS   | VIII-1 |
| B. PROGRAMS APPLICABLE ONLY IN BRAC SITUATIONS  | VIII-1 |
| 1. Annual Leave Savings   | VIII-1 |
| 2. Non-Federal Hiring Incentives  | VIII-1 |
| 3. Hiring Preference for Certain Contractor Jobs  | VIII-1 |

\*

\*

\*

|   |   |        |
|---|---|--------|
| * | C. PROGRAMS APPLICABLE IN BRAC AND GENERAL WORKFORCE<br>REDUCTION SITUATIONS        | VIII-1 |
|   | 1. Voluntary Separation Incentive Pay (VSIP)  | VIII-1 |
|   | 2. Joint Training Partnership Act (JTPA)  | VIII-2 |
|   | 3. Extended Employment for Retirement and Health Insurance Eligibility              | VIII-2 |
|   | 4. Defense Outplacement Referral System (DORS)                                      | VIII-2 |
|   | 5. Reemployment Priority List (RPL)   | VIII-2 |
|   | 6. Office of Personnel Management (OPM) and DoD<br>Interchange Agreement            | VIII-2 |
|   | 7. Pay and Employees Benefits Protection Under<br>the "Portability of Benefits Act" | VIII-3 |
|   | 8. Permanent Change of Station (PCS) Expenses                                       | VIII-3 |
|   | 9. Homeowners Assistance Program (HAP)  | VIII-3 |
|   | 10. Severance Pay   | VIII-3 |
|   | 11. Temporary Continuation of Health Insurance                                      | VIII-3 |
|   | 12. Unemployment Compensation   | VIII-4 |
|   |   |        |

APPENDIX A - UNIVERSAL ANNUAL PAY ADMINISTRATION SUPPLEMENT A-1

|  |     |
|--|-----|
| A. GENERAL   | A-1 |
| B. APPLICABILITY                                   | A-1 |
| C. UNIVERSAL ANNUAL PAY SCHEDULES                  | A-1 |
| D. ADJUSTMENTS TO UA SCHEDULE                      | A-2 |
| E. INITIAL HIRE                                    | A-2 |
| 1. Special Circumstances                           | A-2 |
| 2. Conversion                                      | A-2 |
| F. PROMOTION                                       | A-2 |
| 1. Pay on Promotion                                | A-2 |
| 2. Exceptions                                      | A-2 |
| a. Leader Positions                                | A-2 |
| b. Supervisor Positions                            | A-3 |
| 3. Pay on Promotion in Retained Pay Situations     | A-3 |
| G. GENERAL PAY-FIXING GUIDES                       | A-3 |
| 1. Effective Date                                  | A-3 |
| 2. Simultaneous Pay Changes                        | A-3 |
| H. PAY RETENTION RESULTING FROM CONVERSION ACTIONS | A-3 |

|  |     |
|--|-----|
| I. TWO-YEAR SAVED PAY UNDER THE ONGOING PROGRAM  | A-3 |
| J. PAY ADJUSTMENTS FOR UA SUPERVISORS BASED<br>ON SUPERVISION OF FWS, AS, OR PS EMPLOYEES  | A-4 |
| K. WITHIN-GRADE INCREASES  | A-5 |
| 1. Step Increases  | A-5 |
| 2. Creditable Service  | A-5 |
| 3. Equivalent Increase   | A-5 |
| L. QUALITY STEP INCREASES  | A-6 |
| M. IDENTIFICATION OF EXEMPT AND NONEXEMPT UA POSITIONS                                     | A-6 |
| N. OVERTIME AND OTHER PREMIUM PAY  | A-6 |
| 1. Overtime  | A-6 |
| 2. Other Premium Pay   | A-7 |
| O. DETAILS   | A-7 |
| APPENDIX B - RETIREMENT AND INSURANCE SUPPLEMENT   | B-1 |
| A CREDITED NAFI EMPLOYEE SERVICE   | B-1 |
| 1. Unused Sick Leave   | B-1 |
| 2. Military Leave of Absence   | B-1 |
| B. AMOUNT OF ANNUITY AT NORMAL (AGE 62)<br>OR DEFERRED RETIREMENT                          | B-1 |
| 1. "High-3" Average Compensation   | B-1 |
| 2. Annuity Formula   | B-1 |
| 3. Minimum Annuity   | B-2 |
| 4. Social Security Integration-Social Security Offset                                      | B-2 |
| 5. Retention of Accrued Credited Service for Retirement Annuity Purposes                   | B-2 |
| C. SURVIVOR BENEFITS   | B-5 |
| 1. Survivor's Annuity on Death of Employee   | B-5 |
| a. Eligibility   | B-5 |
| b. Amount of Survivor Annuity on Death in Service  | B-5 |
| c. Adjustment of Amount of Survivor Annuity  | B-5 |
| d. Duration of Payment of Survivor Annuity<br>Following Death in Service                   | B-5 |
| e. Conditions for Termination and Recommencement<br>of Survivor Annuity (Death in Service) | B-6 |

|  |       |
|--|-------|
| 2. Survivor's Annuity on Death of Annuitant After Retirement   | B-6   |
| a. Eligibility   | B-6   |
| b. Amount of Survivor Annuity (Death <b>After</b> Retirement)  | B-6   |
| 3. Lump-Sum Death Benefit                                      | B-7   |
| a. Amount  | B-7   |
| b. Events Warranting Lump-Sum Payment                          | B-7   |
| D. DISABILITY BENEFITS   | B-8   |
| 1. Amounts   | B-8   |
| 2. Recomputation   | B-8   |
| 3. Duration  | B-8   |
| E. TERMINATION OF EMPLOYMENT OR<br>CHANGE IN EMPLOYMENT STATUS | B-8   |
| F. GROUP LIFE INSURANCE  | B-9   |
| G. ACCIDENTAL DEATH AND DISMEMBERMENT                          | B-9   |
| H. COMPREHENSIVE MEDICAL EXPENSE                               | B-9   |
| 1. Comprehensive Medical Expense Benefits                      | B-9   |
| 2. Amount of Benefits  | B-10  |
| 3.. Deductible   | B-10  |
| 4. Lifetime Benefit  | B-10  |
| 5. Second Surgical Opinions                                    | B-10  |
| 6. Catastrophic Coverage                                       | B-10  |
| 7. Coordination with other Benefits                            | B-10  |
| 8. Effect of Medicare  | B - n |
| 9. Dependents  | B - n |
| 10. Extension of Coverage                                      | B - n |
| I. CONVERSION PRIVILEGES                                       | B - n |
| J. WAIVER OF BENEFITS  | B-12  |
| K. BENEFITS FOR RETIREES                                       | B-12  |
| 1. Life Insurance  | B-12  |
| a. Eligibility   | B-12  |
| b. Amount  | B-12  |
| 2. Comprehensive Medical Expenses                              | B-12  |

|   |     |
|---|-----|
| APPENDIX C - POSITION CLASSIFICATION REVIEW AND APPEAL<br>PROCEDURES FOR ADMINISTRATIVE SUPPORT, PATRON<br>SERVICES, AND UNIVERSAL ANNUAL POSITIONS | c-1 |
| A. <b>COVERAGE</b>  | c-1 |
| B. POSITION REVIEW SYSTEM PROCEDURES  | c-1 |
| 1. The Right to Appeal  | c-1 |
| 2. Position Description <b>(PD)</b> Accuracy  | c-1 |
| 3. DoD Component Review System  | c-1 |
| C. APPLICATION FOR REVIEW   | c-2 |
| 1. Content of Application   | c-2 |
| 2. Employee Responsibilities  | c-2 |
| 3. Time Limit for Filing Application  | c-3 |
| 4. Cancellation of Application  | c-3 |
| D. POSITION CLASSIFICATION APPEALS REVIEW FILE  | c-3 |
| E. APPLICATION FOR APPEAL   | c-3 |
| F. APPEAL DECISION  | c-4 |
| APPENDIX D - NAF PAY ADMINISTRATION (Hourly Paid Employees)   | D-1 |
| A. GENERAL  | D-1 |
| 1. Purpose  | D-1 |
| 2. Responsibility   | D-1 |
| 3. Format   | D-1 |
| 4. Future <b>Amendments</b>   | D-1 |
| B. SECTIONS OF SUBCHAPTER S8 CLARIFIED  | D-1 |
| 1. General (S8- 1)  | D-1 |
| a. Introduction (S8-1 .a)   | D-1 |
| b. Agency Responsibility (S8-1.b)   | D-1 |
| 2. Definitions (S8-2)   | D-2 |
| a. Scheduled Rate of Pay (S8-2.a.(2))   | D-2 |
| b. Employee (S8-2.a.(3))  | D-2 |
| c. Highest Previous Rate (S8-2.a.(6))   | D-2 |
| d. Representative Rate (S8-2.a.(7))   | D-2 |
| e. Promotion (S8-2.a.(8))   | D-2 |

|   |      |
|---|------|
| f. Change to Lower Grade (S8-2.a.(9))   | D-2  |
| g. Premium Pay (S8-2.a.( 14))   | D-2  |
| h. Basic Workweek (S8-2.a.(17))   | D-2  |
| i. Overtime Work (S8.2a.( 19))  | D-3  |
| j. Night Shift (S8-2.a.(23))  | D-3  |
| 3. Application of Pay Rates to NAF Wage Employees (S8-3)                                  | D-3  |
| a. Rates Payable (S8-3 a.)  | D-3  |
| b. New Appointments (S8-3.b.)   | D-3  |
| c. Position or Appointment Change (S8-3.c.)   | D-3  |
| d. Computation of Highest Previous Rate (S8-3.e)  | D-3  |
| e. Effective Date (S8-3.f.(1))  | D-4  |
| f. Administrative Error (S8-3 k.)   | D-4  |
| 4. Night Shift Differential and Premium Pay (S8-4)  | D-5  |
| a. General (S8-4.a.)  | D-5  |
| b. Overtime Pay (S8-4.b.)   | D-5  |
| c. Night Shift Differential (S8-4.c.)   | D-10 |
| d. Pay for Holidays (S8-4.d.)   | D-12 |
| e. Pay for Sunday Work (S8-.e.)   | D-14 |
| 5. Within Grade Increases - Waiting Period (S8-5.b.)                                      | D-15 |
| APPENDIX E - PROCEDURES FOR REQUESTING INCREASED<br>MINIMUM RATES (Hourly Paid Employees) | E-1  |
| APPENDIX F - (RESERVED)   |      |
| APPENDIX G - (RESERVED)   |      |
| APPENDIX H - PAYBAND CLASSIFICATION AND PAY SYSTEM FOR<br>WHITE-COLLAR NAF EMPLOYEES      | H-1  |
| A. GENERAL  | H-1  |
| B. STRUCTURE OF PAYBAND SYSTEM  | H-1  |
| C. CLASSIFICATION   | H-1  |
| 1. Determining Correct Band   | H-1  |
| 2. Authority for Placing a Position or an Employee in Band NF-6                           | H-1  |
| 3. Classification Complaints  | H-1  |
| D. PAY SCHEDULES  | H-3  |
| 1. Wage setting Division (WSD), DoD Civilian Personnel<br>Management Semite               | H-3  |



|  |     |
|--|-----|
| a. Minimum/Maximum for Bands NF-1 & 2 and<br>Minimum for Band <b>NF-3</b>                | H-3 |
| b. Maximum for Band NT-3 and Minimum/Maximum for<br>Bands NF-4 through <b>NF-6</b>       | H-3 |
| 2. Amendments to Pay Schedule Policy   | H-3 |
| E. PAY SETTING   | H-3 |
| 1. General   | H-3 |
| 2. Special Pay Setting Situations  | H-4 |
| a. Fair Labor Standards Act (FLSA) Minimum Rate Requirement                              | H-4 |
| b. Transfer of Function  | H-4 |
| c. Promotion   | H-4 |
| d. Involuntary Moves to <b>NAF</b> under the DoD Employee<br>Benefit Portability Program | H-4 |
| 3. Pay Increase  | H-4 |
| 4. Pay Decrease  | H-4 |
| 5. Annual Across-the-Board Adjustments   | H-4 |
| a. Employees in Bands <b>NF- 1</b> and 2   | H-5 |
| b. Employees in Bands <b>NF-3</b> through 5, and <b>NF-6</b>                             | H-5 |
| c. Employees at or Near the Top of a Band  | H-5 |
| d. Employees in a Less than <b>Satisfactory</b> or Equivalent Status                     | H-5 |
| 6. Foreign and <b>Nonforeign</b> Area Allowances and Differentials                       | H-5 |

e. Business Based Action Procedures

(1) Determining Affected Employees.

(a) Covered employees must be ranked to determine the order in which they will be **affected** (unless all employees will be equally tied-separation **due** to base closure, for example). The ranking process must include performance and seniority. Performance may be the primary criterion. The performance factor must include at least the employee's last two **performance** ratings. If there is only one **rating**, then it must be used. If there is no **rating**, then a rating must be issued and used.

(b) The determination of the order in which employees were adversely **affected**, the process used to determine the order, and copies of the written notices shall be maintained in a separate BBA file apart from the employee's official personnel folder. Subject to the provisions of the Privacy Act of 1974, the BBA file shall be made available for review upon request only by an **affected** employee or by those whose official duties require access.

\* (2) Effective Date and Requirement for Extended Employment. In some individual cases, \*  
\* the Chapter VIII requirement for extended employment for retirement and health insurance **eligibility** \*  
\* will **affect** the determination of the effective date of separation. \*

\* (3) Advance Notice. The minimum advance notice period for covered Regular employees \*  
is 7 calendar days for a non-separation action and 30 calendar days for separation. For covered  
Flexible employees, the minimum advance notice period is 24 hours for **non-separation** action and 7  
calendar days for separation. Under emergency conditions (e.g., breakdown of equipment or other  
emergency conditions requiring suspension of operations, or an unanticipated reduction in business  
such as occurs with a sudden deployment of troops) a minimum of 24 hours notice may be given. The  
notice shall contain:

(a) The employee's position title, series, grade or payband **level**, and rate of pay.

(b) A description of the BBA and reason for it.

(c) Advice on severance pay **entitlement**, inapplicable.

(d) Advice on loss of **benefits**, inapplicable.

(e) If the action is separation:

1 A statement that the action taken is non-disciplinary and does not preclude re-employment.

2 Information on the reemployment priority list (**RPL**).

3 Information on eligibility for Civil Service positions for one year from date of separation, under the terms of the DoD/OPM Interchange Agreement.

4 Information on unemployment compensation

5 Information on other benefits described in Chapter VIII, as applicable.

(f) An explanation of the employee's right to appeal, including how and whereto appeal and the time limits.

\*

(4) Appeals of Business Based Actions

\*

(a) General. Covered employees have a right to appeal in accordance with the following provisions, within 7 calendar days after the **effective** date of the **BBA**, if they believe BBA regulations and procedures were not properly applied. Management decisions regarding the **budget**, **workload**, organization and mission are reserved to management and are not appealable. If an employee alleges that the action resulted from an act of **discrimination**, the action may only be contested through the **discrimination** complaint procedure.

A decision in favor of an employee entails the requirement that the employee be "made whole." This includes pay and restoration to duty including employment rights and benefits, as applicable. **If**, however, it is clear the same action would have been taken against the employee even **if the** regulatory or procedural error had not been made, then there is no "made whole" provision.

(b) Representation. An employee may be **accompanied**, represented, and advised by a representative of his or her own **choosing**, provided the person is willing and **free** to do so. The employee **shall** designate his or her representative in writing and provide the designation to the first stage deciding official. The representative's service must not result in a conflict of interest as determined by the installation commander. All costs for the representative shall be borne by the employee.

(c) Use of Official Time. The employee and his or her designated representative may use reasonable amounts of **official** duty time subject to supervisory determination as to when such time may be used in light of priority needs of the **NAFI**. Such time may be used to prepare and present appeals.

\*

(5) Business Based Action Appeals Procedure

\*

(a) First Stage. The employee and his or her representative **shall**, not later than 7 calendar days after the **effective** date of the **BBA**, present an written appeal to the lowest level of **management which can grant relief**. Every **effort** shall be made to resolve the matter promptly and **fairly** at this stage. A written decision shall be provided to the employee within 7 calendar days of receipt of the appeal. It shall summarize the issue, the consideration **given**, and advise the employee of the right to seek relief at the next stage within 7 calendar days from the date of receipt of the **decision**, if he or she is not satisfied.

(b) Second Stage. A written appeal shall be submitted to an **official**, designated by **management**, in the chain of command above the official who considered the appeal at the **first** stage. Upon receipt of the **appeal**, the deciding official may designate a disinterested third party to review the **facts** and make a recommendation to the deciding official. A written decision shall be provided the employee within 45 calendar days of receipt of the appeal. The decision shall **summarize** the issue, the consideration **given**, and advise Regular employees **of**: (1) the right to request a review of the written appeal record by a level above the installation commander or principal management official of the Army and Air Force Exchange Service (**AAFES**); (2) how and where to **file** the request; and (3) time limits for filing. There is no **further** review or appeal above this level for covered Flexible employees.

(c) Third Stage (Applies to Regular employees only). The official above the installation commander, or the principal management official of **AAFES**, designated as the reviewer, shall make a decision based on the written record within 30 calendar days of receipt. **NAF** resources shall be used to accomplish BBA appellate review above the base level. Components may request exception to this NAF resource requirement. There is no **further** review or appeal above this level.

\* (6) Record of Appeal. A complete record of the appeal shall be maintained in the BBA \* file.

#### 5. Reemployment Priority Lists.

a. Each **personnel** office **servicing** a **NAF** activity that separates employees by BBA shall establish a Reemployment Priority List (**RPL**) to provide placement assistance to those separated by BBA. Separated employees shall have priority placement rights in the NAF activity **from** which separated and priority consideration rights at other **NAF** activities in the commuting area. They **shall** immediately be placed on the RPL and remain on the RPL until **reemployed**, but not longer than 1 year from the date of separation.

b. NAF employees who were separated by BBA no more than one year prior to the **effective** date of this RPL policy shall be added to the RPL. Placement or consideration is prospective from the **time** placed on the list. As an exception to the general rule, employees so added shall remain on the list until reemployed or until one year from the date they were added whichever comes first.

c. A person on the RPL shall be offered employment in a vacant position in the NAF activity from which he or she was separated **if**:

(1) Management is filling a vacancy by other than detail or position change (**promotion, demotion, reassignment**).

(2) The position is in the same or lower employment category as the position from which separated.

(3) The position is in the same or lower grade or pay level as the position from which separated.

(4) The position has substantially the same duties as the position from which separated.

d. If the offer is **declined**, the person will be removed **from** the **RPL** and the next eligible person on the RPL will be offered the **position**, and soon until the RPL is exhausted.

e. Rehiring an individual on the RPL is a noncompetitive recruitment action. Therefore, such individuals shall be rehired before those who receive **preference** in competitive recruitment actions.

f. A person on the RPL must also be offered priority consideration for **NAF** jobs in other DoD NAF activities in the commuting area **if**:

(1) **The NAF** activity is **Ming** the vacancy by other than detail or position change (**promotion, demotion, reassignment**);

(2) The vacancy is in the same or lower grade or pay level as the position from which the person on the RPL was separated;

(3) The vacancy is in the same or lower employment **category** as the position from which the person on the **RPL** was separated; and

(4) The vacancy has substantially the same duties as the position from which the person on the RPL was separated.

g. DoD NAF activities shall exchange RPLs within the commuting area to effect the above requirements.

h. An individual's name is removed from the RPL when he or she accepts an offer of a position in the same or higher employment category as the position from which separated in any DoD NAF activity. Declination of such an **offer** constitutes removal from the RPL.

## 6. Employee Grievances

a. NAFI employees shall have the right to present their complaints and grievances to management officials for prompt and equitable consideration. The Heads of **DoD** Components shall establish procedures for deciding grievances of employees in an equitable and timely manner.

b. Where a labor organization has exclusive recognition, any negotiated grievance procedure shall be governed by 5 U.S.C. 7101 et seq., as implemented by DoD Directive 1426.1 and DoD 1400.25-M.

c. The employee grievance procedure may be used to resolve employee disputes of business-based actions and **disciplinary** actions of suspension of 30 days or less.

## 7. Disciplinary Actions

a. A disciplinary action is a personnel action **affecting** a Regular employee that reduced the employee's basic pay or level; placed the employee in a nonpay, nonduty status; or separated the employee from employment; and was effected for cause, i.e., the disciplinary action stemmed **directly from** the actions of the **affected** employee.

b. Disciplinary actions do not include:

(1) Business-based actions.

DoD NAF activities in the commuting area **if**:

(1) **The NAF** activity is **Ming** the vacancy by other than detail or position change (**promotion, demotion, reassignment**);

(2) The vacancy is in the same or lower grade or pay level as the position from which the person on the RPL was separated;

(3) The vacancy is in the same or lower employment **category** as the position from which the person on the RPL was separated; and

(4) The vacancy has substantially the same duties as the position from which the person on the RPL was separated.

g. DoD NAF activities shall exchange RPLs within the commuting area to effect the above requirements.

h. An individual's name is removed from the RPL when he or she accepts an offer of a position in the same or higher employment category as the position from which separated in any DoD NAF activity. Declination of such an **offer** constitutes removal from the RPL.

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## 7. Disciplinary Actions